but waging a war of self-defence on her own account against her Confederate invaders.

2. That the act in question was passed as a war measure.

3. That by the laws of war the belligerent government had a right to declare the property of its enemies forfeited, and that even conceding the privilege of an attorney to be property, the state had a right under the circumstances to declare it forfeited, and the pardon of the President of the United States, whatever its effect upon the privileges of the petitioners as citizens of the United States, did not restore any privileges originally dederived from, and subsequently taken away, by the government of a state.

The court then considered the general authority of the legislature and the court over the admission of attorneys, and were of opinion that the act in question was constitutional.

In respect to the other class of petitioners, BOGGESS ET AL., the court, after a full consideration of the subject, were of opinion that the act in question was not in any legal sense an *ex post facto* law or bill of attainder, and that the admission of an attorney was not such a *contract* between him and the state as comes within the constitutional prohibition to the states from impairing the obligation of contracts.

J. T. M.

Supreme Court of Vermont.

WILLIAM H. CARTER *v.* W. H. M. HOWARD.

Where a physician renders professional services to a married woman at her request and expressly upon her credit, while she is living apart from her husband, he cannot afterwards recover in *assumpsit* against the husband.

THIS was an action of *assumpsit* to recover pay for services as a physician rendered by the plaintiff to the defendant's wife.

The case had been referred by rule of court, and was now before the court upon the facts found and reported by the referee.

Ormsby, Dickey & Worthen, for the plaintiff, cited 1 Pars. Contr. 288–291; *Read* v. *Legard*, 4 L. & Eq. 523; 2 Kent Com. 148; *Day* v. *Burnham*, 36 Vt. 37; *Black* v. *Bryan*, 18 Texas 453.

Hebard & Farnham, for the defendant, cited 20 Eng. L. & Eq. 345, and cases cited in note; *Sawyer* v. *Cutting*, 23 Vt. 486; *Patterson* v. *Gandasequi*, 15 East 62; *Addison* v. *Same*, 4 Taunt. 574; 32 Ala. 227; 18 Conn. 417; Dunlap's Paley's Agency 247–9, *in notis*.

The opinion of the court was delivered by

BARRETT, J.—During the period in which most of the services were rendered, the defendant was confined in jail on a criminal charge. The services were rendered by the procurement of his wife, and on her credit. She had some property in her own right. After her husband was confined in jail she filed her petition for a divorce, and by injunction caused her husband to be restrained from meddling with or disposing of any of the property held in her right. She died of the sickness for which the plaintiff was doctoring her, and while said petition for divorce and said injunction were pending. The defendant was released from jail before his wife died, but did not return to live with her, nor in any way participate in the employment of the plaintiff as the physician of his wife. The separation between them was expected by both, and was designed by her, to be perpetual, and it proved to be so. The plaintiff made his charges to the wife; he presented his account as a claim against her estate; he so made his charges, in the language of the referee, "for the reason that he thought he should be more likely to get his pay from her than from the defendant." These facts distinguish the case very widely from that of *Day et al.* v. *Burnham*, 36 Vt. 37. The decisive point is, whether the mere fact that the services come under the head of necessaries, and are such as the husband would be liable to pay for if rendered on his credit, countervails the legal effect of the other fact, viz. that the services were not rendered on his credit, but were rendered on the credit of the wife. This is not a case of any ignorance or doubt in the mind of the plaintiff as to the character and relations of the person—Mrs. Howard—by whom he was employed and to whom he gave the credit. With full knowledge of all the facts connected with or bearing on the subject, he chose his debtor, and, upon common principles, sustained and illustrated by abundant authority, we think he cannot repudiate that choice and choose again. Howard's legal duty, as husband, to pay for doctoring his wife, in case the doctoring had been done upon the credit of that duty, would not preclude the plaintiff from ignoring such credit and performing the services on the credit of some other person. If the credit is so given, and nothing is subsequently done to authorize a transfer of it to some other person, the plaintiff must stand upon the transaction as it originally occurred; and this, too, irrespective of the relation existing between the person to whom

he in fact gave the credit and the one to whom he might have given it, but did not. Many cases might be cited on this point. See *Patterson* v. *Gandasequi*, 15 East 62; Dunl. Pal. Ag. 247–9, and cases cited in notes; *Sawyer* v. *Cutting et al.*, 23 Vt. 486; 1 Pars. Contr. 288, and cases cited.

These views and authorities do not conflict with the case of *Black* v. *Bryan*, 18 Texas 453.

The judgment of the county court for the defendant is affirmed.

The authorities, we think, would have justified the plaintiff in this case, perhaps, in performing the service upon the credit of the husband, since, although the separation was probably voluntary on the part of the wife, it was in no sense an adulterous elopement, or a separation which either reason or policy ought to condemn, since the husband had no proper home from which the wife had voluntarily absented herself. But the ground upon which the case is placed seems to preclude any recovery of the husband, as the services were not rendered upon the credit of the husband. It is most unquestionable if the husband wrongfully deserts his wife and children, making no provision for them, he is answerable for necessaries furnished them upon his credit: *Walker* v. *Leighton*, 11 Foster 111; *Evans* v. *Fisher*, 5 Gill 569; *Norton* v. *Fazan*, 1 B. & P. 226; *Kimball* v. *Keyes*, 11 Wend. 33. See also as to the general question, Chitty on Cont. pp. 181–194, and cases cited.

I. F. R.

Court of Appeals of New York.

ELIZABETH MACKAY, ADMINISTRATRIX, RESPONDENT, *v.* THE NEW YORK CENTRAL RAILROAD COMPANY, APPELLANT.

Where the defendant (a railroad company) has, by its own act, obstructed the view of travellers upon the public highway by piling its wood so that the approach of the train to the crossing cannot be seen until the traveller is upon the track, one who has driven upon the track with due care, and looked for the train as soon as looking could be of service, will not be deemed guilty of negligence in not first stopping his team to ascertain if a train might be approaching.

If in such case the traveller is killed or injured by a collision with the cars upon such crossing, the company will be deemed guilty of negligence, and held answerable therefor.

ACTION for damages for alleged negligent killing of the plaintiff's intestate by defendant, in December 1864.

It appeared on the trial of the cause that, at the time mentioned, deceased was crossing defendant's track on a public highway in the town of Savannah, with his team and sleigh, from